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the passenger boarded the car standing at a place not a regular stopping place and not in service for receiving passengers, but while the conductor was replacing the trolley which had jumped the wire, and that prior to the injury the negro passenger had not so acted as to menace the safety of passengers, the court must charge that if the injury to the passenger was unexpected and inflicted at a time the carmen could not protect him therefrom, there could be no recovery, where under the instructions given the jury could find for the passenger, though they might believe that the injury to the passenger was unexpected, and inflicted at a time when the carmen were unable to protect him.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1247, 1326-1336, 1343; Dec. Dig. § 321.\* 2 Va.-W. Va. Enc. Dig. 721.]

Error to Circuit Court of City of Norfolk.

Action by Charles McDemmick against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

*H. W. Anderson*, of Richmond, *W. H. Venable*, of Norfolk, and *A. D. Christian*, of Richmond, for plaintiff in error.

*Jas. G. Martin* and *Wm. F. Clarke*, both of Norfolk, for defendant in error.

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BOWE et al. v. BOWE'S ADM'R et al.

Nov. 11, 1915.

[86 S. E. 856.]

**1. Wills (§ 587\*)—Property Disposed of Included—After-Acquired Property.**—A will containing a residuary clause, though written during the life of testatrix's husband, passes all her property, including that which she took under his will, where his real estate was after his death transferred to her on the land books, and she took possession of and exercised ownership over it, and the greater part of his personal estate passed into her actual possession.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1279, 1281-1291; Dec. Dig. § 587.\* 13 Va.-W. Va. Enc. Dig. 801.]

**2. Wills (§ 497\*)—Construction—Legatees.**—Grandchildren to whom bequests are made in the first of four separate papers constituting an holograph will do not take under the second of these, of the same date, naming no grandchildren, but giving \$200 "to each of my grandchildren not named in this, my will."

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1080-1086; Dec. Dig. § 497.\* 13 Va.-W. Va. Enc. Dig. 805.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Appeal from Chancery Court of Richmond.

Bill by Bruce Bowe, administrator of E. L. Bowe, deceased, against Stuart Bowe and others. From the decree, certain defendants appeal. Affirmed.

*C. R. Sands*, of Richmond, for appellant.

*Hill Carter*, of Richmond, for appellees.

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CHESAPEAKE WESTERN RY. *v.* SHIFLETT'S ADM'X.

Nov. 11, 1915.

[86 S. E. 860.]

**1. Master and Servant (§ 278\*)—Injuries to Servant—Evidence.**—In an action for the death of a railroad trackman run down by an engine, evidence held not to show negligence in the operation of the engine or the absence of the conductor in charge.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.\* 9 Va.-W. Va. Enc. Dig. 725.]

**2. Master and Servant (§ 137\*)—Injuries—Presumptions.**—Where employee of a railroad on a track in front of an approaching engine has ample time to step out of danger and is warned, those in charge of the train are justified in presuming that he will look out for himself, particularly as he said that he would take care of himself.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 269, 270, 273, 274, 277, 278; Dec. Dig. § 137.\* 9 Va.-W. Va. Enc. Dig. 667.]

**3. Master and Servant (§ 137\*)—Injuries to Servant—Negligence.**—Where a section man was run down by switch engine after saying he would look out for himself, and those in charge made every reasonable effort to stop after discovering his peril, they were not guilty of negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 269, 270, 273, 274, 277, 278; Dec. Dig. § 137.\* 9 Va.-W. Va. Enc. Dig. 667.]

**4. Appeal and Error (§ 1001\*)—Review—Verdict.**—A verdict of the jury will not be set aside unless it is plainly without evidence to support it; but, when there was not evidence enough to carry the case to the jury, a verdict should be set aside.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3922, 3928-3934; Dec. Dig. § 1001.\* 10 Va.-W. Va. Enc. Dig. 453.]

**5. Master and Servant (§ 97\*)—Injuries to Servant—Federal Employers' Liability Act.**—Where the master was guilty of no primary

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.